PUBLIC(SERVICES) (1948) Department.

MS SERIES.

G.O. No. 1540

Dated 26-6-1948

[Despatch Abstract.]

Statutory rules - Madras Civil Services (classification, Control and Appeal) Rules - Posts not governed by Statutory rules - Applicability - Rule issued in G.O.Ms.No.946 Public (Services) dated 25-3-47 - Amended.

GOVERNMENT OF MADRAS.

ABSTRACT.

STATUTORY RULES - Madras Civil Services (Classification, Control and appeal) Rules - Posts not governed by statutory rules - Application - Rule issued in G.O.Ms.No.946, Public (Services) dated 25th March 1947 - Amended.

PUBLIC (SERVICES) DEPARTMENT.

G.O.MS.NO.1540. DATED 26 - 6- 1948.

ORDER:

The following notification will be published in the Fort St.George Gazette:-

NOTIFICATION.

In exercise of the powers conferred by section 241(2)(b) of the Government of India Act, 1935, His Excellency the Governor of Madras hereby makes the following amendment to the rule published with Public (Services) Department Notification No.51, dated the 25th March 1947, at page 260 of Part I of the Fort St.George Gazete dated the 8th April 1947 as subsequently amended.

The amendment hereby made shall be deemed to have come into force on the 25th March 1947.

AMENDMENT.

After the proviso to the said rule, the following proviso shall be added namely:-

"Provided further that this rule shall not apply to menials paid from contingencies".

(BY ORDER OF HIS EXCELLENCY THE GOVERNOR)

K.Ramunni Menon,
Chief Secretary to Government.

To
All Heads of Departments.
The Secretary, Madras Public Service Commission.
The Departments of Secretariat (including Public).
The Accountant General, Madras.
The Special Officer (Departmental Enquiries) and the Superintendent, Government Press for publication of the notification in the Fort. St.George Gazette.

/ True Copy /

OFFICE ASSISTANT.
MADRAS RECORD OFFICE.

KP/16/9/-.

17/9.

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Issued as Letter No.759/48-4 dated 13-5-48.
From the M.P.S.C.No.2831-C/48-1 dated 26-5-48.

SUMMARISING NOTE.

The file deals with the question whether menials paid from contingencies like watchmen, toties etc. could be dismissed from service after being given a mere show-cause ntice without following the full-dress-procedure prescribed in rule 15(b) of the Classification Control and Appeal rules.

Until the issue of the rule in G.O.No. 946, Public (Services) dated 25-3-47, all Government servants who were outside the purview of the statutory rules (including menials paid from contingencies) were governed in respect of disciplinary matters by the provisions of Section 240(3) of the Government of India Act, 1935 and of any executive instructions issued on the subject. In the absence of any executive instructions, they would be discharged or dismissed.

The rule in the G.O.cited above came to be issued in connection with the appointment of the Special Officer, for the Reorganisation of Indian Medicine. The post of Special Officer was excluded from the purview of the Statutory Rules, but as he was given the status of a Head of a Department with repsonsible duties, it was considered that Government should have proper disciplinary control over him. Though there would have been no objection to enforcing discipline over the Special Officer by means of an executive order, yet it was pointed over that an executive order would not have legal validity as a statutory rule and that provisions of the Classification Control and Appeal rules. Accordingly, the rule in the G.O.at(5) was issued. Subsequent to the issue of the above rule, it was br ught to notice that while a probationer in a regular service could during probation be discharged for unsatisfactory work after giving a simple 'show-cause' notice, a person who holds a temporary post outside the purview of the rules could not be discharged except after the following detailed procedure laid down in rule 15(b) of the Classification Control and Appeal Rules. To remove this namely an amendment to the rule was issued in G.O.No.487, Public (Services) dated 1-3-48 and it was also given retrospective effect with the concurrence of Legal. The question has now arisen whether menials paid from contingencies like watchmen, toties, scavangers etc can continue to be discharged from service for unsatisfactory work or conduct without observing any formality or whether the full-fledged procedure laid down in rule 15(b) of the Classification Control and Appeal rules should be followed in their case also. As the rule at flag (5) applies to them, it follows that strictly speaking the detailed procedure should be followed. This can however be hardly the intention when the above rule was issued. These menials are employed and kept on, not on any regular service conditions. Such being the case it is neither desirable nor feasible to observe the full procedure before discharging them from service. To make this intention clear it is necessary to issue an amendment rendering the main rule inapplicable in the case of menials paid from contingencies. A draft of the necessary amendment is put up. The amendment is to take effect from the date of issue of the rule itself. While accpeting the amendment, Legal point out that it would be undesirable to give retrospective effect ot it since it will have the effect of converting an order of dismissal which was invalid at the time it was passed into a valid order. They however leave it to this department to decide this point as it involves a question of policy. It is respectfully submitted that no big policy is involved here. It is a common occurence in this department give retrospective effect to rules so as to give legal validity to action taken already. In this particular case no hardship will also be caused to the menials because it was not and would have never been the intention to apply to them the detailed procedure before discharging them from service. The Commission to which the draft was referred for remarks has no remarks to offer. The file may now be circulated for approval of the draft amendment below.

Sd...
5-6-48.

KP/17/9/-. /True Copy/

OFFICE ASSITANT
Madras Record Office